Supreme Court, U.S.
FILED

091341 APR 30 2010

OFFICE OF THE CLERK
William K. Suter, Clerk

No. _____

IN THE

Supreme Court of the United States

Bola Ajiwoju,

Petitioner,

v.

University of Missouri, Kansas City,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Mrs. Katharine S. Bunn
Ms. Kathleen M. Markie
Mrs. Ann Thompson

University of Missouri
227 University Hall
Columbia, MO 65211
(573) 882-3211

Counsel of Record

Bola Ajiwoju
6319 Ash Ave
Raytown, Missouri 64133
(816) 313-6901
linda@aaasecretarialservice.com

Pro Se Petitioner/Plaintiff

April 30, 2010

QUESTIONS PRESENTED FOR REVIEW

Whether U.S. District Court Judges for the Western District of Missouri, the Hon. Judges Fernando J. Gaitan, Jr. and Hon. Judge Robert Larsen who is an Adjunct Faculty Law Professor at the University of Missouri, Kansas City, who serves in their Law School as a member of the Board of Directors, should disqualify himself from a case in which UMKC is a defendant. See in re: *Schenck*, 870 p. 2d 185 (OR 1994); *Liteky* v. *U.S. 540* (1994) *Velley et al.* v. *Rapides Parish Sch. Bd.*, 118 F 3d 1047 (5th Cir. 1997) in accordance to 28 U.S. C. §455.

Whether Defendant-Respondent UMKC waived its Eleventh Amendment Sovereign Immunity to Title VI of the Civ. Rights Act of 1964, 42 U.S.C. §2000d et seq,; Title IX 20 U.S.C. §1681 et seq. suit by accepting federal funds or financial assistance aid for their adopted educational program pursuant to 2000d-7.

Whether Title IX 20 U.S.C. §1681 and Title VI 2000d abrogation of state Eleventh Amendment and Sovereign Immunity contained in Sect. 2000d-7 is a valid exercise of Congressional power under Section 5 of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following identifies entities University of Missouri, Kansas City, as a party appearing here and before the United States Court of Appeals for the Eighth Circuit:

Bola Ajiwoju is the Petitioner herein and was Appellant below.

The University of Missouri, Kansas City, was the Respondent Defendant herein before the Court and are the Appellees below.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING ii

PRIOR OPINION 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS 1

STATUTES INVOLVED 3

STATEMENT OF THE CASE 4

PROCEDURAL HISTORY 7

REASONS FOR GRANTING THE PETITION 15, 26

I. The Appeal Court judgment report conflicts with Supreme Court Ruling on Title IX and VI prima facie case ruling *Gebser* v. *Lago Vista Indep. Sch. Dist.* 524 U.S. 274 (1998) Franklin 503 U.S. 60 (1992). The Lower District Court judge violated the disqualification rule 28 USC §455(a). 15, 26

CONCLUSION 32

APPENDIX

Opinion of the United States Court of Appeals for the Eighth Circuit, *Bola Ajiwoju* v. *University of Missouri, Kansas City* No. 09-1541 (February 25, 2010) 1a

Opinion of the United States Court of Appeals for the Eighth Circuit, *Bola Ajiwoju* v. *University of Missouri, Kansas City* No. 09-1541 (February 03, 2010) 2a

THE DOCTRINE OF STANDING 18a

TABLE OF AUTHORITIES

Page

In Re: *Schenck*, 870 p. 2d 185 (1994) at 193 Id at 193-195 15

Valley et al v. *Rapides Parish School Board*, 118 F 3d 1047 (5th Cir. 1997) at 1052 15

Union Carbide Corp. v. *U.S. Cutting Service, Inc.* 782 F 2d 710 (7th Cir. 1986) at 712 15

Liteky v. *U.S. 540* (1994) at 548, 114 S. Ct. 1147.127 L.Ed 474 ..... i, 6, 16

Bradley v. *Schl. Bd. Of City of Richmond Virginia* 324 I. Supp 439 (E.D. Va 1971) at 445 16

United States v. *Antal*, 53 F 3d 568 (3d Cir. 1995) at 574 16

Michigan Dept of Soc. Service v. *Shalala*, 859 F. Supp. 1113, 1123 (W.D. Mich 1994) 16

Withrow v. *Larkin*, 421 U.S. 35, 36, 95 S. Ct. 1456, 1459, 43 L Ed 2d 712 (1975) 16

Alexander v. *Primerica Holdings, Inc.* W F. 3d 155, 162 (3rd Cir. 1993) 16

D. B. v. *Ocean Tp. Bd. Of Educ.*, 985 F. Supp. 457 (D. N. J. 1997) at 540 16

McDonnell Douglas Corp v. *Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed 2d (1973) 17, 18

Franklin v. *Gwinett County Pub. Sch.*, 503 U.S. 6076 (1992) 18, 20, 21, 30

Davis v. *Passman*, 442 U.S. 228, 239, 99 S. Ct. 2264 2274 60 L. Ed. 2d 846 (1979) 18, 26

Carter v. *St. Louis University*, 167 F. 3d 398, 00 (8th Cir. 1999) 18

Smith v. *Metro. Sch. Dist. Perry Township*, 128 F. 3d 1014.1027 (7th Cir. 1997) 18

Gebser v. *Lago Vista Indep. Sch. Dist.* U.S. 118 S. Ct. 1989 (1998) 4, 17, 18, 19

Cannon v. *Univer. of Chicago*, 441 U.S. 677 717 (1979) 20, 22, 27

McLaurin v. *Oklahoma State Regents*, 339 U.S. 631, 70, S. Ct. 851 ..... 21, 28

Ricci v. *Destefano*, 530 F. 3d 87 Rev. and Remand (07-1428-08-328) 21

Grove v. *Alabama State Bd. Of Edu.*, 776 F. Supp. 1518 (M.D. Ala. 1991) 21

Mexican America Edu. v. *State of California*, 835 F. 1534 (1993) 22

Regts Univer. Of California v. *Blakke*, 438 U.S. 265 N. 27 (1978) 21

Siphel v. *Board of Regents*, 1948, 332 U.S. 631 633, 68, s. Ct. 299, 92 L. Ed. 247 ..... 22, 28

Fisher v. *Hurst*, 1948, 333 U.S. 147, 150, 68, S. Ct. 389, 390 92 L. Ed. 604 ..... 23, 28

State of Missouri Ex Rel. Gaines v. *Canada*, 1938, 305 U.S. 337, 351, 59 S. Ct. 232, 237, 83 L. Ed. 208 ..... 5, 22, 28

Sullivan v. *Little Hunting Park Inc.*, 396 U.S. 229 (1969) 19, 29, 29

Mershon, 994 F.2d at 451 28

Miller v. *Compton*, 122 F, 3d 1094, 1098 (8th Cir. 1997) 28

Albright v. *Oliver*, 510 U. S. 266, 271, 144 S. ct. 807, 127 L. Ed. 2d, 114(1994) 26

Jackson v. *Bir. Bd. Of Educ.*, 544 U.S. 16 (2005) 26

Helvey v. *City of Maple Wood*, 154 F. 3d 841, 844 (8th Cir. 1998) 27

Barnard v. *Jackson County, MO*, 43 F. 3d 1218, 1222-23 (8th Cir. 1995) 27

Perry v. *Sinderman*, 408 U.S. 593.597 (1972) 29

Forman v. *Small*, 271 F. 3d 285, 298 (D.C. Cir. 2001) 29

North Haven, 456 U.S. at 533-34 N. 24 29

Gladstone Realtors v. *Villages of Bellwood*, 441 U.S. 91 97-98 (1979) 29

Gomez v. *Toledo*, U.S. – 100 S. ct. 1920, 1923 64 L. Ed. 2d 752 (1980) 29

Monell v. *Dept. of Social Services*, 436 U.S. 658, 683-9, 98 S.ct. 2018, 2032-9, 56 L. Ed. 2d. 611 (1928) 29

Crawford 109 F. 3d at 1283 ..... 26, 30

Litman v. *George Manson University*, No. Civ. A. 97-1755-A 1998 WL 230941 (E. D. Va May 7, 1998) 30

Dill v. *City of Edmon*, 155 F. 3d 1193, 1201 (10th Cir. 1998) 26, 31

ACLU v. *Florida Bar*, 999 F. 2nd at 1492-5 ..... 18a

Jacobs v. *Florida Bar*, 50 F3d, 901, 904 (11th Cir. 1995) 18a

Graham v. *Butterworth*, 5 F 3d at 499 ..... 18a

Williams v. *State*, 162 Ga Ap 415 (1982) 18a

Solomon v. *City of Gainesville*, 796 F. 2d 1464 (11th Cir. 1985) 18a

Frottingham v. *Mellon*, 272 U.S. 447 (1923) 18a

American Bksellers Assn. Inc. v. *McAuliff*, 533 F. Supp. 50, 54 (N.D. Ga. 1981) 18a

CONSTITUTION AND STATUTES:

Spending Clause, Art. 1, S8, Cl. 1 Passim 22

Eleventh Amendment Passim 2, 23, 29, 31

Fourteenth Amendment 1, 5, 15, 22, 26, 29, 31

Section 1. Equal Protection 2, 5, 22, 29

Section 5 Passim 1, 5, 26

Title VI of Civil Right Act of 1964, 42 U.S.C. § 2000 d-7 et. seq. Sect. 601 ..... 4, 22, 23, 24

Title IX of Educ. Amend of 1972, 20 U.S.C. §§1681 et. seq. Sect. 901 ..... 4, 5, 7, 15, 17, 18, 19, 20, 21, 23, 24

42 U.S.C. §1983 Retaliation 12, 13, 21, 22

28 U.S.C. §455(a) 1, 3, 15

28 U.S.C. §1254 1

Fed. C. R. Pro. 60(B)(6) 19

PRIOR OPINION

The panel opinion of the United States Court of Appeals for the Eighth Circuit is reported on February 3, 2010, and is reproduced at Petitioner's Appendix page 2a the Eighth Circuit Mandate judgment was issued on February 25, 2010, is reproduced in this Petitioner's Appendix page 1a. The opinion of the United States district Court for Western Missouri District Court for the Western Missouri Kansas City, dated February 11, 2009, is unreported and is reproduced at Appendix page 6a.

JURISDICTION

The Petitioner prays this Supreme Court to review the Judgment Report entered on February 3, 2010, by the United States Circuit Court of Appeals for Eighth Circuit which Appellant appeal the lower district judgment report pursuant to the jurisdiction conferred by 28 U.S.C. §1651(a). This petition was timely filed because it was mailed within the ninety (90) days of February 3, 2010; the date Appellant appealing motion was denied in Eighth Circuit Court of Appeal Rul. 13.1 and 29.2. Jurisdiction basis for the Eight Circuit is 28 U.S.C. §1651(a) and for the District Court is 28 U.S.C. §1331. This Supreme Court has jurisdiction under 28 U.S.C. §1254(1) to review this case.

CONSTITUTIONAL PROVISIONS

Article v. United States Constitution in pertinent part provides no person shall be deprived of life, liberty or prope ty, without due process of Law.

Section 5 of the Fourteenth Amendment provides that, "The Congress shall have power to enforce, by appropriate legislation, the provision of this article." U.S. Const. Amend XIV, §5. The provision of "this article"

include the declaration that, "No State shall...deny to any person within its jurisdiction the equal protection of the laws." Id. §1.

"Because [the Fourteenth Amendment] was adopted subsequent to the Eleventh Amendment, and its substantive provision expressly regulate state action, the Fourteenth Amendment supersedes or limits the Eleventh Amendment to the Extent they are inconsistent." 17 Moore's Federal Practice §123.22[a] (3d ed.1997) (footnote omitted); see also Seminole Tribe, 517 U.S. at 59, 116 S. Ct. at 1125.

STATUTES INVOLVED

Title 28 U.S.C. §455(a) states any Justice, Judge or Magistrate of the united States shall disqualify him/herself in any proceeding in which his impartiality might reasonably be questioned. Title 28 U.S.C. §455(b)(5)(i) in pertinent part states, he shall disqualify himself where he's a party to the proceeding or agency he works for or officer, director or trustee or whoever they practice law with in the past.

STATEMENT OF THE CASE

The Petitioner filed lawsuit in the United States District Court for Western, Missouri District Court in Kansas City, on December 12, 2006, named University of Missouri, Kansas City, Respondent, and alleges that Respondent UMKC intentionally discriminated against him purposely due to his race, national origin, gender/ sex in violation of Title VI 2000d. and Title IX, 20 U.S.C. 1681 et seq.

The official in Chain of Command Robert Floyd, President of the institution, and Bruce Bubacz, Chancellor of the institution, who were in control to remedy the discrimination and have actual knowledge of the Petitioner's Complaint but acted with deliberate indifference to the racism complaint and the discrimination was based on race, sex, and nationality that was so severe or pervasive, that it deprived Petitioner access to the educational opportunity provided by this Respondent, UMKC Institution. *Gebser* v. *Lago Vista Indep Sch. Dist.* 524 U.S. 274, 290 (1998). Petitioner complained to the higher institution administrator and authority that he was being discriminated against based on his race, nationality, sex/gender, for the school's failure to admit him to their Psychology Program for which he qualifies. In violation of Title VI of the Civil Rights Act of 1964. Petitioner is protected from retaliation by the school for opposing that unlawful practice. Sect. 601 and Sec. 901 make it unlawful for higher institutions receiving federal funds to retaliate against students "because they are protested racist practices against them in the institution of learning." In addition, complaint made by Petitioner in writing to the Respondent authority became a reason of stereotyping and retaliation that Petitioner was intentionally awarded capricious grades, "called different 'N' word" language and terminated in graduate

school without an informal hearing. In violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Sect. One of the 14th Amendment provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection the laws." Section 5 provides the enforcement authority to bar such practices: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The Respondent UMKC has a history of intentional violation of the Equal Protection Clause of the Fourteenth Amendment against the students based on their nationality, race, sex, color and this Respondent's discrimination action was the result of respondent UMKC's customary policy and practice. See *State of Missouri, ex rel – Gaines v. Canada* 1938 305 U.S. 337, 351, 59 S. Ct. 232, 237 83 L. Ed. 20; *West* v. *Atkins*, 487 U.S. 42, 48–51 (1988)

Respondent UMKC's School was restricted for only Caucasian race and women in violation of Title VI and Title IX 20 U.S.C. §§1681(a) see *United States* v. *Virginia*, 518 U.S. 515, 534 (1996). This case was first assigned to Hon. Judge Robert Larsen who is an adjunct Faculty Professor at Respondent UMKC Law School in Kansas City and disclosed his interest to complainant; but directed this case to 3rd Circuit Judge who is Hon. Fernando Gaitan, Jr., who is also an instructor at Respondent law school which failed to disclose his interest to Petitioner but continued acting as Attorney for

Respondent UMKC. This resulted in the inability for this Judge to render a fair judgment in this case. "Literally it called pervasive bias exception to the exjudicial source doctrine." See *Davis* v. *Bd. Of Sch. Comm's of Mobile County*, 517 F. 2d 1044, 1051 (CA5, 1975) cert. denied, 425 U.S. 944, 96 S. Ct. 1685, 48L Ed 2d 188 (1976). *Liteky* v. *U.S.* 510 U.S.C. 540 (1994) understands his action violates the Rul. §455 See *In re Schenck*, 870 P 2d 185 (or 1994) at 193. This Hon. Judge Gaitan, Jr., suppressed Exhibits 2, 3 and 4 contained in the Title IX complaint attached to the Petitioner's opposition to the Respondent's summary judgment and grant summary judgment in favor of Respondent UMKC, based on prima facie case which Petitioner has demonstrated in his memorandum opposition to Respondent's Summary Judgment (Doc. 110) including that Petitioner did not mention other students who got C – C – F grades who were not dismissed from their program. This lower court understands that "FERPA" 20 U.S.C. §1232g prohibits Petitioner from naming other students who were treated fairly in the social graduate school that were failed but not in their educational transcript so they can continue with their program. Petitioner cannot mention their names without their consent because grades awarded to these student are part of their disciplinary record; name, address and financial aid records. See *Miami Student* v. *Miami University*, 680 N.E. 2d 956 (Ohio 1997).

In accordance to the lower District Court trial schedule, it remained 25 days to go for Juror selection in this case before the Lower Court dismissed this case in favor of Respondent, UMKC. The Lower District Court was supposed to have a jury trial before deciding this case that was based on Federal court determination in violation of Title §8 of the Constitution.

PROCEDURAL HISTORY

Petitioner was first admitted to UMKC as non-degree seeking student in 2003. Petitioner applied to five-year Doctorate Program in Psychology in January 2004 but was "denied" admission. Petitioner applied to two-year Master Degree program in Psychology. Defendant denied Petitioner admission in 2004. Respondent wrote Petitioner a letter to place the application on a waiting list, which Petitioner agreed to this suggestion. Apparently Respondent denied Petitioner's admission in 2005 and 2006. Petitioner was intentionally withdrawn from CPCE 527, CPCE 515, CPCE 517. Apparently, Petitioner has been terminated for protesting UMKC's suspension from Education Psychology Program. All capricious "F-C-C" grades were intentionally awarded to Petitioner so they would have a reason for dismissing Petitioner from their program because Petitioner protested Respondent's racism action.

Prima Facie

The UMKC school officials in the chain of command, Robert Floyd, President, and Bruce Bubacz, Chancellor, of this institution: (1) had actual knowledge of discrimination Petitioner faced; (2) were deliberately indifferent to those racism complaints; (3) the racism harassment was so severe, pervasive and objectively offensive that it (4) deprived Petitioner access to the educational benefits or opportunities provided by the UMKC graduate school; and (5) this such rule imposes liability only on those school districts or universities that choose to ignore Title IX's and Title VI's mandate for equal educational opportunities.

Alicia Miguel's racist actions or inactions in the classroom are the cause of the incomplete grade awarded to Petitioner. During the summer of 2006,

Petitioner enrolled in Educ. 548 taught by Alicia Miguel. Alicia's actions or inactions contributed to intentional discrimination against Petitioner by: (a) changing the class schedule; (b) refusing to give Petitioner practicum paper for this course; (c) scrutinizing Petitioner's assignment; (d) asking Petitioner to use reflection instead of answers; (e) asking Petitioner to resubmit research paper, which Petitioner did, but she never changed Petitioner's grade; (f) awarding incomplete grade to Petitioner; (g) Ms. Miguel mostly supported the four Caucasian females in the class, giving them websites to copy their research papers, and awarded "A" grades to them, even though their weekly assignments were not better than Petitioner's; and (h) giving them practicum paper for classroom observation which was not given to Petitioner. Alicia was hostile to Petitioner for gender reasons.

Prima Facie

(1) Petitioner was qualified for this program; (2) is a protected minority class; (3) the racial discrimination animus was motivated by race, national origin & gender; (4) Suffering adverse discrimination deprived Petitioner access to educational benefits provided by UMKC in both social work and psychological graduate school programs; (5) Respondent officials had knowledge of the discrimination; (6) Respondent officials acted with deliberate indifference to the claim; and (7) the discrimination occurred in the context of classroom assignment activities.

In the summer of 2005, Petitioner took Education Course 566 taught by Dr. Susan Adler. Ms. Adler's actions or inactions contributed to the intentional conspiracy with other female teachers to discriminate against Petitioner by accusing him of copyright plagiarism, in retaliation for Petitioner continuing to take classes in the Education/Psychology program in which Petitioner

was not accepted to this program; (a) Adler accused Petitioner of stealing education that he was not entitled to; (b) Adler said she would make sure Petitioner was suspended from continuing to take classes from UMKC because people such as Petitioner were not entitled to attend UMKC.

There is nothing as plagiarism in Class 566. The plagiarism accusation is just a subterfuge as a method used by the UMKC Psychology/Education program to intimidate, harass and discriminate against minorities such as Petitioner so they can kick him out of their Psychology program. Petitioner did not attend UMKC Psychology/Education Department anymore. Social Work graduate school program is totally different from Psychology Program under the field of Social Psychology Science. Psychology credit hour grades do not incorporate or transfer to Social Work graduate school credit hours. Psychology course programs are different setting that never related to Social Work program.

Pursuant to Fed. R.C.P. 17 U.S.C. 106(1), the plagiarism accusation has been a method of intimidation, harassment, coercive, discrimination against a minority as Petitioner and used by UMKC to kick Petitioner out of their Psychology program as non-degree seeking.

> "Sect. 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section for the purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use scholarship, or research) is not an infringement of copyright). In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

> (1) the purpose and character of the use including whether such use is of a commercial nature or is for nonprofit educational purposes, (2) the amount and substantiality of the portion used to the copyrighted work as a whole."

Scholar must not lie about research finding and all research assignment work must be cited. Student must not miss research works and claim it as their own personal information.

Contrary to Ron Maguire's action or inaction that contributed to intentional discrimination toward Petitioner by suspending Petitioner from UMKC Psychology Department without a hearing or statement from the Petitioner. Petitioner protested Ron Maguire's suspension but Ron had already set up some hearing panels who are UMKC employees, working under Ron Maguire and Petitioner met with those women, but all were acting in conspiracy with each other in the interest of Ron Maguire and they did not even accept Petitioner's defense stories and stopped Petitioner from concluding his defense. They failed to bring other student research papers which Petitioner had requested for comparison with Petitioner's research papers which would prove that Petitioner and other Caucasian students did their research paper assignments in the same method and none of them were accused of plagiarism. In addition, Petitioner appealed this to Bruce Bubacz and Elson Floyd, who is the President of UMKC. No response from them. Bruce Bubacz's response was an egregious misjudgment in support of UMKC's racism. He intentionally breached his duty to Petitioner.

In contrast to Respondent UMKC's action or inaction for refusing to allow Petitioner to take classes in Psychology Department, Petitioner reapplied to UMKC

Social Work Graduate School to which Petitioner was admitted in September 2004 and Social Work Department encouraged Petitioner to wait until September 2005 before enrolling in classes.

In the fall semester of 2005, Petitioner enrolled in Social Work Course 530, taught by Betty Blackmon. The action or inaction taken by Betty Blackmon contributed to intentional discrimination toward Petitioner by awarding Petitioner capricious C grades because Petitioner did not meet with her privately and Petitioner's test and research papers were satisfactorily excellent. Petitioner complained to Betty and she promised to change the grade to B, but never did. Petitioner submitted his assigned research paper by the due date and test. Betty even asked the Petitioner in the classroom, "Where did you complete your undergraduate degree?"...to which Petitioner did not respond other than to smile.

Prima Facie

> (a) Petitioner is a protected minority; (b) Petitioner was qualified for this program; (c) the discrimination was based on national origin and sex; (d) there is a causal link connection between all Respondents mentioned in this motion and conspiracy by reverse discrimination against Petitioner; (e) Petitioner's assignments were satisfactorily excellent; (f) Respondent treated other citizens outside his protected class more favorably; and (g) Respondent's reverse discrimination actions are pretextual.

Betty's gender, racism, and suppressive behavior are the reason that Petitioner was awarded capricious grade in Class 530. Betty always flipped and erased the video camera projector in the classroom just to distract students' comprehension and her instructional interaction with the

students is confusing. She is not able to explain the topics surrounding her teaching illustration. All textbooks recommended in this class are not open during the class session. Students cannot take notes. She always asked students to conduct research for classroom assignments without guidelines. Petitioner believes that Blackmon was under "psychological substances" which prevented her from teaching properly and became a burden to her to misgrade student assignments in support of UMKC's racism policy.

Petitioner received a suspension letter on November 15, 2005 from Walter Boulden, Director of Social Work Program, for the purpose of retaliation since they had been informed that Petitioner was protesting his suspension from the School of Psychology program, which asked Petitioner not to attend UMKC again and also stated that if Petitioner attended, he would not receive credit/grades for any classes attended. From the psychological context of the November 15, 2005 letter, Petitioner was being informed that UMKC must retaliate and Betty always said that she and Boulden were working on a project together for the Social Work program or something else. Petitioner did respond to Boulden's letter on November 22, 2005, as racist and criticized him for withdrawing Petitioner from one of the Social Work classes toward the end of the semester. Boulden's letter was presented to the lower court with notice that he was being terminated as of November 15, 2005 for protesting UMKC's failure to admit him to the Psychology School and using plagiarism to kick him out of the Psychology program.

In the spring of 2006, Betty acted in concert with UMKC and other female teachers whose names appear in the invocation to the court, by awarding Petitioner capricious F grade in Social Work Course 531, which

Betty taught with instructional deceit tactics. Betty gave Petitioner and five female students a group research assignment paper based on a type of discrimination women face in the workplace and personal research questionnaire based on judicial observation which Petitioner completed satisfactorily,. but Betty Blackmon awarded those women A grades and awarded Petitioner a capricious grade. Petitioner's research paper on pedophilia was excellent twice – but returning the paper to Petitioner for redo was a method of retaliation, intimidation and harassment. Pedophilia paper is only 10% in the syllabus and two group research projects were 25% each and courtroom observation text at 20% which Petitioner concluded in reasonable time and submitted to Betty. In Social Work Class 531, Betty's instructional strategy was so poor that she flipped the video camera projector recklessly. She failed to give handouts to students upon topic discourse in the classroom. Her teaching methods are not clear and poor. She recommended three textbooks for Class 531 but none of the books got opened during classroom instructional sessions. Betty teaches under a psychological substance that affects her cognitive ability to reason. She cannot grade student assignments as a professional instructor, though she is not trained to be an academic teacher in college. Betty told Petitioner in the class during a week toward the end of the semester on April 21 or 22, 2006; that nobody knows why he wants to be a social worker, why did the Petitioner even come to this school, why didn't the Petitioner go somewhere else. And all the instructors in UMKC know who Petitioner is and they must retaliate. Petitioner did hand a note to Betty that the way she directed her speech and criticized Petitioner and graded Petitioner's papers are in violation of Title VI - prohibiting, race, nationality, color, gender/sex discrimination.

In the spring semester of 2006, Petitioner enrolled in Social Work Course 535 taught by Cynthia Larcom. Cynthia Larcom's action or inaction contributed to intentional discrimination toward Petitioner by her failure to give Petitioner assignment guidelines for research papers but gave it to all the Caucasian classmates. At the beginning of the semester, Cynthia gave Petitioner and five (5) female students research assignments twice and one personal research paper which Petitioner completed by due date and submitted to her. Cynthia awarded A grades to those ladies and awarded Petitioner C grade because of Petitioner's gender as a black male and his national origin. C grade in graduate schools is an F grade. The research paper Cynthia asked the Petitioner to rewrite is 10% of the syllabus. Cynthia Larcom did not give Petitioner assignment guideline to the research paper. Petitioner completed all classroom assignments properly. In the following week, Petitioner met with Cynthia to discuss the research paper and Cynthia said it was very good and that the Petitioner would get a good grade. See Petitioner dep. At pp. 150 (17, 18. 20. 24); 153 (6, 11, 22,25); 153 (1). Other group research papers carried 25% each and 15% or 15% classroom test assignments and presentation gave Petitioner A grade for this class. Because of UMKC's mandate to their instructors to award capricious grades to minorities, such as Petitioner, in their program is the reason for the C grade.

REASONS FOR GRANTING THE PETITION

The Lower District Court, Honorable Judge Guitan, Jr, and Honorable Robert Larson abused their judicial discretion in violation of 28 U.S.C. §455(a)

The Petitioner's due process and equal protection rights under the Fifth and Fourteenth Amendments continue to be severely abridged or suffered in this case because of Hon. Judge Fernando Guitan, Jr., and Hon. Robert Larson who intentionally violated 28 U.S.C.{455 (a) by concealing the Title IX Notice Exhibit memo given to Respondent UMKC Official and ruled otherwise in favor of Respondent because of his position in UMKC's Law School, as an Adjunct Law Professor, see MRE Schenk, 970 P.2d 185 (or. 1994) at 193 ld. At 189, 193-195. Being a part time Professor and Associate, Hon. Judge Robert Larson, who is an Adjunct Law Professor. These two mentioned Judges are not supposed to sit on this case or make decisions relevant to this case, see Camera V. United States, 375f. 2d 77 (U.S. Claims, 1967), at 781. The U. S. Supreme Court held that any court, or government hearing officer, decision makers are constitutionally unacceptable in some circumstances (including where an adjudicator is a target of personal abuse or criticism from the party before him, or concealment of evidence provided before him to support relative party – see Valley et al V. Rapides Parish School Board, 118 F. 3d 1647 (5th cir. 1997), at 1052. In addition to this case, where the judge's refusal to recuse himself from a certain case, it thus cast a shadow over the litigation and substantial challenge to the Federal judicial procedure. And this Supreme Court has used Writ of Mandamus or Certiorari to review judgment order report of denying motions to disqualify, see *Union Carbide Corp.* v. *U. S. Cutting Service, Inc.*, 782F. 2nd. 710 (7th Cir. 1986) at 712. In the psychological reality of this case, from the beginning

to the end of this case, Hon. Judge Robert Larson was all over this case, because of his position as an Adjunct Professor at Respondent, UMKC Law School.

The due process requires judges to be free and neutral and able to render fair decisions and avoid his partiality might be questioned. Hon. Judge Robert Larson psychologically refused to disqualify himself, in violation of 28. U.S.C. §455 (b)(5)(1), see Cannon 2 of the Code of Judicial Conduct of the American Bar Association. In this particular case, both Hon. Judge Gaitan Jr., and Hon. Judge Robert Larson intentionally violated this 28 U.S.C. §455, See *Liteky* v. *U. S. 540* (1994) at 548, 114 U.S.C. 1147. 127 L. Ed. 474. And quoting Justice Scalia's opinion in *Liteky*: relevant to §144 about judicial bias or prejudice which is applicable to judges and magistrates, see *Bradley* v. *School Board of the City of Richmond, Virginia*, 324 F. Supp. 439 (E. D. Va. 1971) at 445 in accordance to 28 U.S.C §455 (a) means what it means. For disqualification of magistrates and judges in any procedure where their partiality might be questioned, see *United States* v. *Antal*, 53 F. 2d 568 (3rd Cir 1995) at 574.

This U. S. Supreme Court stated that fair trial in a fair tribunal is a basic requirement of due process. In any administrative adjudicatory proceeding either in the judicial proceeding, in the court of law, see *Michigan Dept. of Social Services* V. *Shalala*, 859 F. Supp. 1113, 1123 (W.D. Mich. 1994) (quoting *Withrow* v. *Larkin*, 421 U. S. 35, 36, 95 s. ct. 1456, 1459, 43 l. Ed. 2d 712 (1975), Justice Kennedy concurring, stated Litigants as Petitioner does not need to face judge which is impartiality might be questioned. See *Liteky* v. *U. S.*, 510 U. S. 540 91994). *Alexander* v. *Primerica Holdings, Inc.* 10 F. 3d, 155, 162 (3rd Cir. 1993). *D.B.* V. *Ocean Tp. Board of Education*, 985 F. Supp. 457 (D.N.J. 1997) at 540. This Hon. Judge Fernando Gaitan, intentionally concealed Exhibits 2, 3,

and 4, which Petitioner gave to Respondent, UMKC's official about the Title IX violation. And these judges continuously criticized Petitioner for it and granted summary judgment for Respondent UMKC, because he is a law instructor in Respondent's Law School and Hon. Judge Robert Larson is an Adjunct Professor. Both of these judges know every one of the Respondent officials and these judges' position in their law school becomes part of the reason different harsh gender racisms were imposed on minority and immigrant students, such as the Petitioner. And the Lower District Court Judgment order is clearly erroneous. See *Hernandez* v. *New York, 500 U.S.* 352, 369 (1991); *C. F. Anderson* v. *City of Bessemer*, 470 U.S. 564, 573-74 (1985) Title VII; *Pullman-Standard* v. *Swint*, 456 U.S. 273, 286-291 (1982). Petitioner is entitled to relief in these avenues under Fed. C.R.P 60(B)(6), for Supreme Court to reverse the Lower Court's Summary Judgment Order.

This Lower District Court judgment order dated February 11, 2009, using *McDonnell Douglas Corp.* v. *Green*, 411 U.S., 792, 93 s. ct. 1817, 36L. ed. 2d. (1973) prima facie case under Title VII claim of utilizing Title VI & Title IX claims are totally erroneous and are problematic in this circumstance and is a pretext. Because this honorable Supreme Court has upheld in *M. Warren* v. *Reading School District* supra that Title VI and IX are not identical to cause of action under Title VII. And is not appropriate for court to use Title VII agency principle to impute liability or prima facie case, see *Gebser* v. *Lago Vista Independent School District*, 524.U.S. 274 (1998) which this Supreme Court analyzed this such prima facie case.

Prima Facie

> The school officials in chain of command (1) had actual knowledge of discrimination; (2)

were deliberately indifferent to those racism complaints; (3) the discrimination was so severe, pervasive and objectively offensive; (4) that it deprived Petitioner of access to the educational benefits or opportunities provided by the UMKC Graduate School. And Petitioner is a protected minority, see *Franklin* v. *Gwinett County Public School*, 503 U.S. 6076 (1992). *Davis* v. *Passman*, 442 U.S. 228, 239, 99 s. ct. 22, 2274, 6030, L. Ed. 2d, 84b (1979) and Title VI and Title IX 42 U.S.C. §2000d-7 are made to protect students from educational institution discrimination. *Davis* 119 S. Ct. at 1671. *Cannon*, 441 U.S. 677. 99 S.Ct. 1946. Whenever complainant given institution Title VI racism complaint it encompassed race, national origin, color gender/sex, immigrant, creed, ancestry discrimination.

Whenever given Title IX discrimination complaint to higher institutional official without mentioning sex, it has stood for sex or gender discrimination.

The Eighth Circuit Court using *Carter* v. *St. Louis University*, 167 F, 3d. 398, 400 (8th cir. 1999) in which Petitioner, "Carter" did not meet 42 U.S.C §1981 prima facie in his litigation, and Eighth Circuit and Judge Fernando Gaitan Jr., comparison logistical legal assertion under *McDonnell Corp.* v. *Green* are in conflict with this Supreme Court ruling on Title VI and Title IX prima facie requirement set up by Supreme court ruling in this case, see – Franklin V. Gwinnett County Public School 503, U.S. 6076 (1992), see Gebser, 118 s. ct. at 1999. *Smith* v. *Metropolitan School District, Perry Township*, 128 F 3d 1014, (7th Cir. 1997).

Furthermore, the intent action of both judges are malicious and it thus undermines the public confidence

in the Federal judicial process and cast shadow in this litigation and also threatens petitioner's right to fair judgment. As this [Supreme] Court holding in *Liteky* v. *U.S.* 510 U.S. 540 (1994) at 563, stated that during judicial hierarchical proceeding any favoritism or antagonism which will exasperate unfair judgment impossible, require disqualification, under Rul. §455 (a) to serve and protect the Court integrity. This Lower Court wrongly granted summary judgment in favor of Respondent UMKC, conceal the evidence exhibit provided to the Court and maliciously, willful negligence, show prejudicial conduct in violation of 28 U.S.C. §455 (a). For this reason, Petitioner respectfully asks the Supreme Court to please relieve him from the operation of the summary judgment which was granted through Defendant UMKC Law School instructor Hon. Judge Fernando Gaitan, Jr. in this Civil Action pursuant to Fed. R.C.P. 60(B)(6). So that this case can be fairly tried by a jury on its merits in front of judge who are not associate with Respondent UMKC, so Petitioner can go back to Graduate School and finish his Master Degree in Psychology which were the reasons of retaliation in this case. See *Sullivan* v. *Little Hunting Park, Inc.* 398 U.S. 229 (1969)

The Petitioner respectfully asks the Hon. Supreme Court to please kindly grant this petition because the decision below conflicts with this Supreme Court's decision in *Gebser* v. *Lago Vista Indep. Sch. Dist.* U.S. 118 S. Ct. 1989 (1998) and the Lower District Court decision in this case are clearly erroneous, pursuant to Title VI and Title IX 20 U.S.C. □ 1681 (a) in Federal Law issue. See *Hernandez* v. *New York 500 U.S.* 352, 369 (1991).

Title VI provides: No person in the United States shall, on grounds of race, color or national origin, be excluded from participation in, denied the benefits of,

or be subjected to discrimination under any program receiving federal assistance. 42 U.S.C. §§2000d.

Section 901 of Title IX 2000d provides in relevant part that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 USC §1681.

In addition, this Supreme Court uphold that there is implied private right of action under this Federal Law Title VI and IX. See *Cannon* v. *Univ. of Chicago*, 441 U.S. 677, 717 (1979). In this litigation, there is both injunctive relief and punitive damages are available for intentional discrimination as of this case right herein. See *Franklin* v. *Gwinnett County Pub. Sch.*, 503 U.S. 60 717 (1992). In accordance with Title VI and IX, there is known administrative exhaustion requirement. Petitioner can petition the court directly. See Cannon 441 U.S. 717 (1979) and obtain the full range remedies. See Franklin Supra at 72. The Title VI and IX provisional constitution is a right to be free from race gender/sex, nationality discrimination perpetrated by the educational institution. See Smith 468 U.S. at 1012. This Hon. Supreme Court upheld that School District is liable under Title VI and IX for any institutional racism, intentional perpetrated by teachers, instructors, administrators, only when an official of school district has actual notice of the misconduct and did nothing to correct it but deliberate indifference to notice of misconduct in their institutional program – Gebser 118 Ct. at 1989. This Hon. Supreme Court should have idea, logical reason that Petitioner was not admitted to Psychological Program because he is an alien. Dr. Adler informed Petitioner that Writ guaranteed to American citizens under the equal protection clause of the Fourteenth Amendment

does not extend to Petitioner because of his status as immigrant from different nationality which is the reason of capricious failing grade in the graduate school. See *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 631, 70 S. Ct. 851. This Respondent UMKC School has been restricted to only Caucasian students only.

The Lower District Court Judgment Report order dated February 11, 2009, which was affirmed by Eighth Circuit were clearly erroneous. Petitioner did state prima facie case in his Doc. #110, page 21, 23, & 25 in Petition suggestion in opposition to the Defendant's Motion for Summary Judgment. The judgment report order disregarded all Petitioner legality ascertain but continuously repeated Defendant summary motion brief. Petitioner brief to Eighth Circuit pages 3, 5, 6, 7, 10, 14, & 16 contain all necessary prima facie case under Title VI & IX. This Respondent UMKC official in Chain of Command, Robert Floyd, Bruce Bubacz, Linda Murdock, Thomas Palmer have knowledge of the Title IX discrimination but acted deliberately indifferent to the complaint which occurred under their control. See *Gebser* v. *Lago Vista Indep. Sch. Dist* 524 U.S. 274, 290 (1998) in the Educ. 542 Class and Educ. 548 Class, Educ. 566 Class under Educational Psychology program. Those examination text questions were contradictory and did not specifically apply to mental health psychology. See *Ricci* v. *Destefano* 530 F. 3d 87 reversed and remanded (07-1482-08-328).

In the social work class 530, 531, 535, Respondent UMKC has mandated their teachers or instructors to award Petitioner capricious grade because he's an immigrant and Petitioner was not allowed in their educational graduate program. This is the reason for capricious grade. See *Grove* v. *Alabama State Bd. Of Edu.* 776 F. Supp. 1518 (M.D. Ala. 1991) *Regts Univer.*

of California v. *Blakke* 438, U.S. 265 N. 27 (1978) where poor grades were awarded to students based on their race and gender. See *Mexican American Edu.* v. *State of California*, 835 F. 1534 (1993) and one of the Respondent official, Catherine Thomas, said to Petitioner that natural citizens as Petitioner are not allowed in the UMKC program including Dr. Adler and Dr. Betty Blackman. In other terminology, Petitioner did not have same equality rights as other students to attend UMKC graduate school, which means UMKC says Petitioner is not entitled to the equal protection clause of the Fourteenth Amendment provided to all American Citizens because he is a naturalized alien. See *Sipuel* v. *Board of Regents*, 1948, 332 U.S. 631, 633, 685 Ct. 299, 92 L. Ed. 247. See *Fisher* v. *Hurst*, 1948, 333 U.S. 147, 150, 68 S. Ct. 389, 390, 92 L. Ed. 604. In *State of Missouri – ex rel. Gaines* v. *Canada*, 1938, 305 U.S. 337, 351, 59 S. Ct. 232, 237 83 L. Ed. 208. See Chief Justice Hughes addressing opinion for court stated (that every individual in American entitled to the equal protection of the law and the State was bound to furnish him facilities for legal education substantially equal to those which the State afforded for persons of Caucasian race whether or not other black people (Negros) should have the same opportunities – partial case of race distinction in State graduate professional educational school) as Respondent UMKC. Minority, naturalize immigrant student as petitioner face intentional prejudicial discrimination, in this Respondent graduate school, they must eliminate those students because the school authority thought because they are from overseas they are not entitle to equal education as American or have the same equal protection clause of the Fourteenth Amendment of Title VI Civil Right Act of 1964 which prohibits race, nationality, color, sex/gender discrimination and intentionally denied admission to Psychology Graduate School which Petitioner qualified

for this program. Petitioner took ten other classes which Petitioner received A's and B's exempt the three classes which has been used to exclude petitioner from Respondent UMKC's graduate school intentionally because of his race, nationality and sex/gender. In violation of Title VI & Title IX 20 U.S.C. §1681 et. seq. which provides:

"A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of Section 504, of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, or the provisions of any other Federal Statute prohibiting discrimination by recipients of Federal financial assistance."

"Congress recognized that in holding of *Atascadero* had implications for not only Section 504, but also Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, which prohibit race and sex discrimination in "program[s] or activit[ies] receiving Federal financial assistance." See S. rep. No. 388, 99th Cong. 2d Sess. 28 (1986); 131 Cong. Rec. 22,345 (1985) (Sen. Cranston); see also United Stated Dept. of Transp. V. Paralyzed Veterans of Am. 477 U.S. 597, 605 (1986) ("under III Title VI, Title IX, and §504, Congress enters into an arrangement in the nature of a contract with the recipient of the funds; the recipient's acceptance of the funds triggers coverage under the nondiscrimination provision")."

"The Department of Justice explained to Congress while the legislation was under consideration, "[t]o the extent that the proposed amendment is grounded on congressional spending powers, [it] makes it clear to [S]tates that their receipt of Federal funds constitutes a waiver of their [E]leventh [A]mendment immunity."

132 Cong. Rec. 28,624 (1986). On signing the bill into law, President Reagan similarly explained that the Act "subjects States, as a condition of their receipt of Federal financial assistance, to suites for violation of Federal laws prohibiting discrimination on the basis of handicap, race, age, or sex to the same extend as any other public or private entities." 22 Weekly Comp. Pres. Doc. 1421 (Oct. 27, 1986), *reprinted in* 1986 U.S.C.C.A.N. 3554.

Respondent UMKC intentionally retaliated based on Petitioner status as naturalized alien. See *William* v. *Illinois*, 339 U.S. 235 (1970) and for exercising his First Amendment Right to UMKC Officials by complaint of Title VI & IX mandatory violation. This Respondent UMKC intentionally terminated or kicked out foreign students found in their educational program, "jurisdiction". See *Furman* v. *Georgia* 408 U.S. 238, 242 (1972) in *Espinoza* v. *Farah Manuf. Co. Inc.* 414 U.S. 86 (1973) the Supreme Court holding that government cannot discriminate against people because of their alien status, national origin, sex. See *Makhija* v. *Debeun Cather & Co.* 666 F. supp. 1158 117 (N.D. III 1987) (deny Plaintiff promotion because he is not a U.S. born citizen, found to be euphemism for national origin discrimination. See *Plyler* v. *Doe* 457 U.S. 202, 210 (1982) Supreme Court held that Fifth Amendment protect aliens from unlawful invidious discrimination by Federal Government. Punish "Guerra" purposed of his alien status, not his act. See *League of U. L. American Citizens* v. *Wilson* 908 F Supp. 755 772. (C.D. Cal 1995) Proposition 187 preempted by Fed. Law denied education and health care to alien children in part violated by Supreme Court's holding on *Decanas* v. *Bica* 424 U.S. 351 (1976) that state cannot dictate who is suppose to live in United States while they are under Federal Financial assistance.

Both Lower District Court Judges who are adjunct Professors in the UMKC Law School involved in this case because Respondent UMKC also has a contract with those two Judges to dismiss any case against Respondents in violation of 28 U.S.C. §455 (a). Eighth Circuit affirms Lower court ruling because of petitioner status as naturalized alien. See *United States* v. *Onwuemene*, 933 F. 2d. 650 652 (8th Cir 1981. Vacating sentence, trial court improperly imposed maximum sentence based on his alien status.

International Covenant on Civil and Political Rights, art. 2 1, 26 999 U.N.T.S. 171, 6 I.L.M. 368 (1967), adopted by the General Assembly of the United National Dec. 16, 1966 (entered into force March 23, 1976) (emphasis added) (hereinafter "Covenant"). Accord Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc., A/1810 at 71 (1948). The American Law Institute's Restatement (Third) of Foreign Relations Law of the United States ("Restatement") 711, comment further recognizes that international law "requires that foreign nationals be accorded the equal protection of the laws and fervid unreasonable distinctions between aliens and nationals") (emphasis added). That protection extends to "even [to those foreign nationals] unlawfully in the country." Id. at comment i. As a signatory to the Covenant, the United States has further undertaken "to guarantee to all persons equal and effective protection against discrimination," including discrimination based on "race, color...national or social origin...birth or other status." Covenant art. 26; see also Universal Declaration of Human Rights, G.A. Res. 217, U.M. Doc. A/1810 at 71 (1948) art. 2., Restatement 702. "The customary law of human rights is a part of the law of the United States to be applied as such by State as well as federal court," Restatement 702, comment c, and thus should have been. See The Paquete Habana, 715 U.S. 677, 700 (1900).

The Supreme Court upheld that while the victims are females and the perpetrator are opposite sex, there is sex racism. See Reed v. Reed 404 U.S. 71, 73 (1971) See *United States* v. *Virginia*, 518 U.S. 515 116 S. Ct. 2264, 2275 (1996) holding that the equal protection clause prohibits a State funded education institution from practice racism against student based on gender. See *Mississippi Univer. For Women* v. *Hogan*, 458 U.S. 718 (1982). Congress was acting pursuant to Section 5 of the Fourteenth Amendment powers enforceable through Sect 1983 of the equal protection. See *Crawford* v. *Davis*, 109 F. 3d at 1283; Franks, 142 F. 3d at 363.

REASON FOR GRANTING THE PETITION

Whether individual students who suffer retaliation from complaints that higher institutions discriminate are in violation of Title VI, IX of Educ. Amendment of 1972 20 U.S.C. §1681 et seq have a private cause of action for sect. 1983 retaliation, see Dill. 155 F. 3d at 1204. *Sullivan* v. *Little Hunting Park, Inc.* 396 U.S. 229 (1969). *Jackson* v. *Birmingham Board of Education* 544 U.S. 167 (2005). Cannon 441 U.S. 677(1979) This Supreme Court should please grant this petition because the Eighth Circuit decision affirmed lower court judgment report order are in conflict with this court decision in Jackson 544 U.S. at 176 and Cannon 441 U.S. 677 (1979) The lower court dismissed §1983 retaliation claim based on Sect. 537-600 RSMO (2000). The lower court judgment order is clearly erroneous. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 286-291 (1982);

The retaliation of Sect 1983 §5 of the Fourteenth Amendment abrogate state Eleventh Amendment and sovereign immunity to suit in Federal Court, *Albright* v. *Oliver*, 510U S. 266, 271, 144 S. ct. 807, 127 LED 2d,

114(1994) Federal Law preempts State Law. See *United States* v. *Ottiz*, 422 U.S. 891, 9515 (1975).

In addition, Respondent UMKC is a recipient of Federal funds and Congress conditions state agencies receiving Federal funds constitutes a waiver of the Eleventh Amendment and sovereign immunity to suit 132 Cong. Rec. 28. 625 (1986) through provisions of article U.S. Constitutional Amendment XIV, § 5 and Article [8. Cl. 1.

In *Helvey* v. *City of Maple Wood*, 154 F. 3d 841, 844 (8th cir. 1998) the court held that retaliation against the exercise of First Amendment rights is a basis for Sect. 1983 liability, see *Barnard* v. *Jackson County, Missouri*, 43F, 3d 1218, 1222-23 (8th cir. 1995). Petitioner exercises his First Amendment right that Respondent UMKC employees intentionally discriminated against him by failure to admit him to 2 year Psychology program in Master level and 5 year Psychology program in their Doctorate program became the reason for retaliation and the greatest reason that capricious grades were awarded to Petitioner and he was kicked out without a formal hearing.

This Supreme Court holding that protection against retaliation is an integral aspect of the right to be free from discrimination see *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979), and there is individual right of action under Title IX and VI because Sect. 601 Sect. 901 of both Titles prohibit intentional retaliation as this Respondent intentionally discriminated against Petitioner and informed Petitioner psychologically that this Respondent UMKC authority thus not want this type of person as Petitioner in their graduate school. Why can't he go to another school or somewhere else? Said by Dr. Adler in class and Dr. Betty Blackmon in Social Work class, and Petitioner will be dealt with relevantly.

In accordance to this verbal abuse statement by a teacher in graduate school, those individuals have a mutual understanding or meeting of the minds between official, instructor teacher of Respondent UMKC to retaliate against Petitioner by awarding him capricious grade and kicking him out of graduate school without informal hearing. See *Mershon*, 994 F.2d at 451 quoted in *Miller* v. *Compton*, 122 F, 3d 1094, 1098 (8th Cir. 1997). They were psychologically informing Petitioner that the Equal Protection Clause of the Fourteenth Amendment guaranteed to individual Americans through the Constitution to be educated in Kansas City, Missouri. Rights herein are not entitled to Petitioner because of his race, national origin and gender became the reason Petitioner was kicked out of graduate school by awarding him capricious grade. See *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637, 705. Ct. 851. Question presented by the court: "To what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate schools in a state university." See *Army* v. *Municipal Court*. 1947, 331, U.S. 549, 675. Ct. 1409, 91 L. Ed. 1666, see case cited therein. *Sipuel* v. *Board of Regents*, 1948, 332 U.S. 631, 633, 68 s. ct. 299, 92 L. Ed. 247. *Fisher* v. *Hurst*, 1948, 333, U.S. 147, 150, 68, s. ct. 389, 390, 92 L. Ed. 604. In *State of Missouri ex rel. Gaines* v. *Canada*, 1938, 305 U.S. 337, 351, 595, ct. 232, 237. 83. L. Ed. 208. And awarding capricious grade and allegation of plagiarism are partially reason for racial segregation, see Supra 339 U.S. 631, 705 ct. 849. This lower District Court erred by stating Sovereign Immunity of a Municipality, sect. 537, 600 RSMO (2000) prohibits retaliation claim against Respondent and Eighth Circuit Panel erred by affirming lower court judgment order.

The Supreme Court held that retaliation is not explicitly mentioned in the Constitution. It is necessarily actionable under 42 U.S.C. §1983 in order to protect the individual's Constitutional rights, see *Sullivan* v. *Little Hunting Park, Inc.* 396 U.S. 229 (1969), when he was expelled from membership in his community for renting to a black man. See, *Perry* v. *Sinderman,* 408 U.S. 593, 597 (1972), Sect. 504, 42 U.S.C. §2000-c, prohibited retaliation from any State or Federal employment. See, *Canino* v. *EEOC*, 707 F 2d, 468, 471-72, (11th Cir. 1983), *Forman* v. *Small*, 271 F 3d. 285, 298 (D.C. Cir. 2001), North Haven, 456 U.S. at 533-34 N. 24., In *Sullivan* v. *Little Hunting Park* 396 u.s. 229 (1969). *Gladstone Realtors* v. *Village of Bellwood* 441 U.S. 91. 97-98 (1979) Residents who acted as testers to track racial steering practices were entitled to prove that racism practices documented by their testing deprived them in their community area of both social and professional benefits of living in an integrated society.

The abrogation of the Eleventh Amendment, Sovereign Immunity of State University receiving federal funds contained in Sect. 42. U.S.C 2000-7 is a valid exercise of Congress' power under Sect. 5 of the Fourteenth Amendment which applies to 42 U.S.C. 1983, retaliation. The Civil Right of 1871 § 1983 was to enforce the equal protection clause of the Fourteenth Amendment through remedial of Civil Right of 1870 of 42 U.S.C. 1981. See *Gomez* v. *Toledo*, U.S. – 100 S. ct. 1920, 1923 64 L. Ed. 2d 752 (1980) and the Eighth Amendment to the Constitution applies to the State, see *Monell* v. *Dept. of Social Services*, 436 U.S. 658, 683-9, 98 S – ct. 2018, 2032,-9, 56 L. Ed. 2d. 611 (1928). See *Barnes* v. *Missouri*, 960 F. 2nd 63, 64 (8th Cir. 1992) (Per Curiani). Denial motion to dismiss on Eleventh Amendment or Sovereign Immunity grounds.

This Supreme Court has held that Section 2000 d-7, as meeting Congress' requirement is unambiguously expressed in the text of the statute it intends to remove the Sovereign Eleventh Amendment Immunity bars private suits against states and cities receiving Federal funds in Federal Court. See *Franklin* v. *Gwinnett County Public School*, 503 U.S. 60, 72 (1992), Crawford 109 F. 3d at 1283, *Lane* v. *Pena* 518 U.S. 187, 198-200 (1969). Respondent UMKC has waived it's immunity to suit in this case as a recipient of Federal Funds pursuant to Section 2000 d-7, see *Litman* v. *George Mason University*, No. Civ. A. 97-1755-A, 1998 WL. 230941 (E.D. VA, May 7, 1998)

42 U.S.C. §1983 which provides that:

> "[e]very person who, under color of any statute, ordinance, regulation, custom or usage, of any State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities cured by the Constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other property proceeding for redress [.]" 42 U.S.C. §1983 (2000). Under §1983, a Petitioner alleges (1) that the defendant "deprived him of a right secured by the 'Constitution and laws' of the United States [;]" and (2) that defendant acted "under color law" *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 150, 26 l. Ed. 2d 142, 150, 90 S. Ct. 1598, 1604 (1970)

This Respondent UMKC's intentional racism retaliation action are clearly violate Petitioner's First Amendment Free Speech Rights, see Pickering V. Board of Education, 391 U.S. 563 (1968) and Petitioner's complaint is to protect Respondent's knowledge of

awareness to correct their racism, actions and decision of Respondent UMKC, by deliberate indifference to the complaint, substantial or motivating factor to the detriment of Petitioner's educational success, see *Dill* v. *City of Edmond*, 155 F 3d, 1193, 1201 (10th Cir. 1998)

> "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article, "U.S. Const. Amend. XIV, §5. "The Congress shall have the power to lay and collect taxes, duties, imposes and excises, to pay the debts and provide for the common defense and general welfare of the United States but all duties, imposts and excises shall be uniform throughout the United States." U.S. Const. Art. I, §8, cl. 1. See *Seminole Tribe* v. *Florida*, 517 U.S. 44, 65, 72-73 (1996) (holding that, without waiver of immunity, Congress can abrogate states' Eleventh Amendment sovereign immunity when it legislates pursuant to Article I (of which the Spending Clause is a part)); *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 456 (1976) (holding that regardless of waiver of immunity, Congress can abrogates states' Eleventh Amendment sovereign immunity when it legislates pursuant to Section of the Fourteenth Amendment). See generally Melanie Hochberg, Protecting Students Against Peer Sexual Harassment: Congress' Constitutional Powers to Pass Title IV, 7r N.Y.U.L. rev. 235 (1999) (arguing that Title IX was passed pursuant to both the Spending Clause and the Fourteenth Amendment). See, e.g., John Irving, Wrestling with title IX, N.Y. Times, Jan. 28, 2003 at A21.

CONCLUSION

Wherefore, for the reasons stated above, the Petitioner respectfully asks the Honorable Supreme Court to please relieve him from the operation of the summary judgment granted through Respondent UMKC's Law School instructors, Honorable Judge Fernando Gaitan, Jr. in this civil action pursuant to Federal Civil R Pro 60 (b)(6). Petitioner is entitled to this relief in this avenue. Moreover, Petitioner urges the Supreme Court to please grant this Writ of Certiorari Petition in favor of Petitioner, so he can go back to Psychology Graduate School and finish his Master's Degree, which Petitioner has only 18 credit hours of core subjects left to graduate from Respondent's institution.

Respectfully Submitted,

/s/ Bola Ajiwoju, Petitioner
6319 Ash St.
Raytown, Missouri 64133
816-313-6901
linda@aaasecretarialservice.com

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 09-1541

Bola Ajiwoju,

Appellant

v.

University of Missouri, - Kansas City,

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-01005-FJG)

MANDATE

In accordance with the opinion and judgment of 02/03/2010, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

February 25, 2010

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 09-1541

Bola Ajiwoju,

Plaintiff - Appellant

v.

University of Missouri, - Kansas City,

Defendant - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:06-cv-01005-FJG)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

February 03, 2010

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For The Eighth Circuit
Thomas P. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

February 03, 2010

Mr. Bola Ajiwoju
#2
6319 Ash
Raytown, MO 64133-0000

RE: 09-1541 Bola Ajiwoju v. University of Missouri

Dear Mr. Ajiwoju:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

MER

Enclosure(s)

cc: Ms. Katharine S. Bunn
Ms. Kathleen Murphy Markie
Ms. Ann Thompson

District Court/Agency Case Number(s):
4:06-cv-01005-FJG

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 09-1541

Bola Ajiwoju,	*	
	*	
Appellant,	*	
v.	*	Appeal from the United
	*	States District Court for
	*	the Western District of
	*	Missouri
University of Missouri-Kansas City,	*	
	*	[UNPUBLISHED]
	*	
Appellee.	*	

Submitted: January 27, 2010
Filed: February 3, 2010

Before WOLLMAN, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Bola Ajiwoju appeals the district court's[1] adverse grant of summary judgment in his discrimination action. After careful de novo review, see Carter v. St. Louis Univ., 167 F.3d 398, 400 (8th Cir. 1999), we conclude that summary judgment was proper for the reasons stated by the district court. Accordingly, we affirm. See 8th Cir. R. 47B.

[1]The Honorable Fernando J. Gaitan, Jr., Chief Judge, United States District Court for the Western District of Missouri.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

BOLA AJIWOJU,	)	
Plaintiff,	)	
v.	)	No. 06-1005-CV-W-FJG
THE CURATORS OF	)	
THE UNIVERSITY	)	
OF MISSOURI,	)	
Defendant.	)	

ORDER

Currently pending before the Court is defendant's Motion for Summary Judgment (Doc. # 101); plaintiff's Motion for Order to Refile Copy of Separate Proposed Jury Instructions (Doc. # 130); plaintiff's Motion in Limine (Doc. # 132); plaintiff's Motion to Amend/Correct Trial Brief (Doc. # 134); plaintiff's Motion for Order to Prohibit Counsel for the Defendant from Making Comments Related to Certain Paragraphs of the Proposed Venire Voir Dire (Doc. # 136) and plaintiff's Motion for Order to Grant Objection to Section #4, page 5 of the Joint Proposed Jury Instructions (Doc. #137).

I. BACKGROUND

Plaintiff was a student at the University of Missouri - Kansas City from October 2003 until June 2006. Plaintiff alleges that the University discriminated against him on the basis of his race, national origin and gender. He has sued the University under Title VI and Title IX. Plaintiff is a protected member of a minority group, being of African-American heritage. He is also a descendent of Nigerian national origin.

In October 2003, plaintiff applied for admission to the Ph.D. program in Counseling Psychology in the Education Department. In January 2004, plaintiff was denied admission into this graduate program. In September 2004, plaintiff applied to the Master's Program in Counseling and Guidance. In November 2004, his application to this program was denied. Plaintiff alleges that he was denied admission into these programs because of his race, gender and/or national origin. In November 2004, Plaintiff was admitted to the Master of Social Work Program. In Fall 2004, plaintiff took the course Education 542 and received an "F" in this class. Plaintiff does not know the grades received by the other students in this class. In the summer of 2005, plaintiff took the course Education 548 and Education 566. Plaintiff received an incomplete in Education 548 and an "F" in Education 566. In the Fall of 2005, plaintiff was charged with plagiarism in Education 566. He was provided with a Student Conduct Hearing on the plagiarism charge in December 2005. Plaintiff was informed of the charges against him and was permitted to state his side of the case. The Student Conduct panel found that plaintiff had committed plagiarism and determined that plaintiff would be suspended from the Winter and Fall Semesters of 2006. However, plaintiff decided to appeal the panel's determination, so he was allowed to continue taking classes. In the Fall of 2005, plaintiff took Social Work 530 in which he received a "C." In the Winter 2006 semester, plaintiff took three courses in social work and received an "A", "C" and "F." In June 2006, the University informed plaintiff that he would not be allowed to continue in the Social Work program because he had received an "F" and two "C's" either concurrently or cumulatively.

Plaintiff filed his Complaint against the University on December 12, 2006.

II. STANDARD

A moving party is entitled to summary judgment on a claim only if there is a showing that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R.Civ.P. 56(c). "[T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986). If the moving party meets this requirement, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. 242, 248 (1986). In Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986), the Court emphasized that the party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts" in order to establish a genuine issue of fact sufficient to warrant trial. In reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party, giving that party the benefit of all inferences that may be reasonably drawn from the evidence. Matsushia, 475 U.S. 574, 588; Tyler v. Harper, 744 F.2d 653, 655 (8th Cir. 1984), cert. denied, 470 U.S. 1057 (1985).

III. DISCUSSION

A. Title VI

Title VI states:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination

> under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d

> The essential elements of a Title VI claim are (1) there is race or national origin discrimination, and (2) the entity engaged in discrimination is receiving federal financial assistance.

Washington v. Jackson State University, 532 F.Supp.2d 804, 810 (S.D.Miss. 2006).

The Court in Washington explained:

> The burden of proof in a Title VI case is the same as that for Title VII and other civil rights statutes. . . . In the absence of direct evidence of discrimination, the plaintiff may seek to establish a prima facie case with circumstantial evidence utilizing a variation of the McDonnell Douglas Corp v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed2d 668 (1973), model. To establish a prima facie case, a plaintiff must show that he is a member of a protected class, he suffered an adverse action at the hands of defendants in pursuit of his education, he was qualified to continue in pursuit of his education, and he was treated differently from similarly situated students who were not members of his protected class.

Id. at 810 (internal citations omitted).

In Washington, the plaintiff alleged that Jackson State University dismissed him from its psychology doctoral program because of his race. The Court found that the plaintiff was a member of a protected group,

because he was African-American. The Court also concluded that he had suffered an adverse action when he was dismissed from the doctoral program. However, the Court determined that plaintiff could not show he was qualified to continue pursuing his studies or that other similarly situated students were treated differently than he was. The plaintiff in Washington was dismissed because he had received three "C's." The academic guidelines stated that a student could have no more than two "C's" and remain in the graduate program. Additionally, plaintiff offered no evidence that any other student with three "C's" had been allowed to remain in the program.

Similarly, in the instant case, plaintiff has shown that he is a member of a protected class and he also suffered adverse actions in pursuit of his education. However, plaintiff has not shown that he was qualified to continue pursuing his studies nor has he shown that other similarly situated students were treated any differently. From the time that plaintiff was admitted to the Master of Social Work program in the Fall of 2004 until he was dismissed from the program in June 2006, plaintiff received two "C's" and an "F" in three of his Social Work classes. The Master of Social Work Program Student Handbook stated that if a student receives a grade of "F" and two grades of "C" either concurrently or consecutively, it will result in an automatic nonretention in the program. Thus, plaintiff clearly was not qualified to continue pursuing his education.

Additionally, plaintiff fails to offer any evidence that other similarly situated students were treated differently. Plaintiff makes only vague assertions that other students were treated differently. In his Statement of Facts, plaintiff stated that his Education 542 class the professor "awarded Caucasian ladies "A" and "B" grades, Black

ladies "C" grades, and intentionally awarded Plaintiff an "F" grade because [the professor] said Plaintiff is not admitted to the Educational Counseling program in violation of law upon which this lawsuit is established." (Plaintiff's Statement of Facts, ¶ 12). In his Suggestions in Opposition to the Motion for Summary Judgment, plaintiff appears to suggest that it is the defendant's responsibility to provide the names of and the grades that other students received. Plaintiff states, "it is Defendant's attorney's duty to search for those students and compel them to come to court to testify, rather than asking Plaintiff to mention their names. Most American-born women who received poor grades are not kicked out of the program, and women are treated better than Black men in this social work program." (Suggestions in Opposition, pp. 25-26). However, as noted by the Court in DeLeon v. City of Dallas, Civ. Action No. 3:02-CV-1097-K, 2008 WL 2941245 (N.D. Tex. July 25, 2008):

> [u]nder the McDonnell Douglas test, a plaintiff must demonstrate a *prima facie* case of discrimination, and the defendant must then articulate a legitimate, nondiscriminatory reason for its decision. . . . If the defendant meets its burden of production, the plaintiff must then offer sufficient evidence to create a genuine issue of material fact either 1) that the defendant's reason is not true, but is instead a pretext for discrimination (pretext alternative); or 2) that the defendant's reason, while true, is only one of the reasons for its conduct, and another motivating factor is the plaintiff's protected characteristic (mixed-motive alternative).

Id. at *3 (internal citations omitted). Thus, it is the *plaintiff's* burden, not the defendant's to show that there were other similarly situated students who were

treated differently. Plaintiff has failed to come forth with any evidence, other than general assertions, that other students received either better grades or were treated differently than he was. As the Court stated in Washington, "conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments are not an adequate substitute for specific facts showing a genuine issue for trial." Id. at *5. Because plaintiff has failed to establish a prima facie case, defendant is entitled to summary judgment on plaintiff's Title VI claim.

B. Title IX

Title IX state in part:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance...

20 U.S.C. § 1681(a). The term "program or activity" is defined under the statute to include "a college, university, or other postsecondary institution, or a public system of higher education." See 20 U.S.C. § 1687(2)(A).

Defendant argues that for a University to be liable under Title IX, plaintiff must show that the University was 1) deliberately indifferent 2) to known acts of discrimination c) which occur under its control. Ostrander v. Duggan, 341 F.3d 745, 750 (8th Cir. 2003). See also Brown v. School District of Kansas City, Missouri, No. 05-768-CV-W-ODS, 2007 WL 172360 (W.D. Mo. Jan. 18, 2007); Shrum ex rel. Kelly v. Kluck, 249 F.3d 773, 782 (8th Cir. 2001). In Brown, the Court stated:

> [a] school district will only be held liable for situations which it exercises substantial control over both the harasser and the context in which

> the known harassment occurs. . . . In other words, a school district must have had actual notice of a teacher's sexual harassment of a student and the school district must have made an official decision not to remedy the violation in order for liability to attach to the school district.

Id. at *4 (internal citations and quotations omitted). UMKC argues that in plaintiff's case, he never notified any University official that he was being discriminated against on the basis of his sex or his gender. In his Suggestions in Opposition to the Motion for Summary Judgment, plaintiff attaches numerous letters that he sent to University officials complaining that he was being discriminated against. However, in none of the letters does plaintiff complain that the discrimination is on the basis of his gender or his sex. In an April 26, 2005 letter sent to Elson Floyd, UMKC President, plaintiff states: "Chris Brown, Duane, and their admission committee have discriminated against me because of my nationality and race which is in clear violation of my Civil Rights act of 1964 under 42 sect. 1981-2000 . . . . U.M.K.C. is suppose to promote my educational growth, but they disparately treated and discriminated against me because of my nationality and my minority race." (Plaintiff's Exhibit 7). In a letter dated February 13, 2006 again addressed to Elson Floyd, plaintiff states: "I am hereby appealing my suspension by the Dean of Graduate Education for Psychology Department, Dr. MacQuarrie. All the plagiarism accusations and Alder's memo were clear fabrications and are subterfuge used as a method of retaliation and discrimination against me, based on my nationality and race:" In a letter dated October 30, 2006, addressed to Dr. Bruce Bubacz, Provost for Academic Affairs, plaintiff states, "I am appealing the capricious grade awarded to me from the Social Work Course due

to my nationality and minority race." In a November 23, 2005 letter addressed to W.B. Boulden, Chair of the Graduate Social Work Program, plaintiff states: "[t]he action taken or not taken by Dr. Boulden, upon withdrawal of this student from Foundation Practice I Class, based on Dr. Boulden's intentional prejudice and discrimination toward this student because he is of a minority Black race and national origin of African descent from Nigeria, is a clear violation of the Civil Rights Act of 1964 under Title VI, 42-U.S.C. § 2000d, para 12d." (Exhibit 10). In a September 14, 2006 letter addressed to Karen S. Vorst, Ph.D., plaintiff states, "[s]ince July 3, 2006, I have been trying to appeal the poor grades awarded to me in Social Work courses 530, 531, and 535 due to my nationality and ethnic minority race. I have not received any response from any of your representatives concerning this matter." In an October 3, 2006 Memo to Jeff Traiger, plaintiff states, "[w]ould you please let me know exactly when to come to your office to meet with you or if there is going to be a hearing for this? Before I know my stand, because I have suffered a lot of prejudice and discrimination from UMKC due to my minority, ethnicity, race and national origin."

The Court finds that although plaintiff complained to the University on multiple occasions, he never once states that the discrimination is because of his gender. Thus, the University did not have "actual notice" and thus could not have been deliberately indifferent to a situation they were unaware of. As the Court stated in Lin v. University of Nebraska, No. 4:05CV3153, 2006 WL 2927166 *2 (D.Neb. Oct. 11, 2006), aff'd, 268 Fed. Appx. 485 (8th Cir. 2008), "[i]t is simply not sufficient for plaintiff to claim that she was treated poorly or unfairly by defendant, she must show that the motivation for this treatment was her gender. Because plaintiff did not make

such a showing plaintiff failed to establish her case." In the instant case, it is clear that plaintiff believes he was treated unfairly, however, as he states numerous times in his letters, he believes that the motivation for the unfair treatment was based on his race or his nationality. This is not discrimination which Title IX was designed to remedy. Accordingly, because plaintiff has failed to meet the elements necessary to make a prima facie case, the Court hereby **GRANTS** defendant's Motion for Summary Judgment on plaintiff's Title IX claim.

IV. CONCLUSION

Accordingly, for the reasons stated above, the Court hereby **GRANTS** defendant's Motion for Summary Judgment (Doc. # 101) and **DENIES** as **MOOT** plaintiff's Motion for Order to Refile Copy of Separate Proposed Jury Instructions (Doc. # 130); plaintiff's Motion in Limine (Doc. # 132): plaintiff's Motion to Amend/Correct Trial Brief (Doc. # 134): plaintiff's Motion for Order to Prohibit Counsel for the Defendant from Making Comments Related to Certain Paragraphs of the Proposed Venire Voir Dire (Doc. # 136) and plaintiff's Motion for Order to Grant Objection to Section #4, page 5 of the Joint Proposed Jury Instructions (Doc. # 137).

/s/ FERNANDO J. GAITAN, JR.

Fernando J. Gaitan, Jr.

Chief United States District Judge

Date: 2/11/2009

Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

BOLA AJIWOJU,	)
Plaintiff,	) Case No.
v.	) 06-01005-CV-W-FJG
THE CURATORS OF	)
THE UNIVERSITY	)
OF MISSOURI	)
Defendant.	)

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been determined and a decision has been made.

IT IS ORDERED AND ADJUDGED that defendant's Motion for Summary Judgment (Doc. # 101) is GRANTED and plaintiff's Motion for Order to Refile Copy of Separate Proposed Jury Instructions (Doc. # 130); plaintiff's Motion in Limine (Doc. # 132); plaintiff's Motion to Amend/Correct Trial Brief (Doc. # 134); plaintiff's Motion for Order to Prohibit Counsel for the Defendant from Making Comments Related to Certain Paragraphs of the Proposed Venire Voir Dire (Doc. # 136) and plaintiff Motion for Order to Grant Objection to Section #4, page 5 of the Joint Proposed Jury Instructions (Doc. # 137) are DENIED as MOOT.

AT THE DIRECTION OF THE COURT

P.L. BRUNE

Court Executive

/s/Joella Baldwin

By: Deputy Clerk

Dated: 2/11/2009

THE DOCTRINE OF STANDING

Petitioner is standing to prosecute this case pursuant to Article II, §2 CL 1 and proceed pro se pursuant to 28 U.S.C.§1654. Petitioner is a proper victim in this case and he was mistreated disparately and deprived of his right to be educated and he was psychologically injured, harmed and endured pain caused by Respondent UMKC's intentional racist decision forbidden by the pertinent law. See *ACLU* v. *Florida Bar*, 999 F. 2nd at 1492-5. See *Jacobs* v. *Florida Bar*, 50 F3d, 901, 904 (11th Cir. 1995). The Eleventh Circuit held that a credible threat of prosecution were "at the time the [Plaintiffs] filed [the] action they intended to engage in arguably protected conduct the statute seemed to proscribe." *Graham* v. *Butterworth*, 5 F 3d at 499. See *Williams* v. *State*, 162 Ga Ap 415 (1982). See *Solomon* v. *City of Gainesville*, 796 F. 2d 1464 (11th Cir. 1985). The Eleventh Circuit found that Plaintiff had standing to challenge the City ordinance banning signs containing "obscene, indecent or immoral material over his property." See *Frottingham* v. *Mellon*, 272 U.S. 447 (1923). *American Bksellers Assn. Inc.* v. *McAuliff*, 533 F. Supp. 50, 54 (N.D. Ga. 1981). Petitioner cannot find attorney to represent him in this case. These are the reasons to proceed pro se.